



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 20, 1993

Mr. Patrick S. Dohoney  
Hill County Attorney  
P.O. Box 253  
Hillsboro, Texas 76645

OR93-256

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19143.

You received a request for copies of a professional services proposal submitted by ArchiTexas to Hill County for restoration and renovation of the Hill County Courthouse (the "project"). You claim that the information is excepted from required public disclosure by sections 3(a)(1), 3(a)(4) and 3(a)(10) of the act.

You contend that the information is not subject to the act because Hill County does not have a right of ownership of the requested information, pursuant to its contract with ArchiTexas. Section 3(a) provides in part:

All information *collected, assembled, or maintained by* or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or in connection with the transaction of official business is public information. [Emphasis added.]

The contract with ArchiTexas permits Hill County to retain copies of all documents prepared by ArchiTexas that are related to the project. Although Hill County may not have a contractual right of ownership to the information, it clearly collected and maintains physical custody of the information. Virtually all information in the physical custody of a governmental body is subject to the Open Records Act, unless a section 3(a) exception applies. Open Records Decision Nos. 558, 549 (1990). Because Hill County has physical custody of the requested information, the information is subject to the act.<sup>1</sup>

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<sup>1</sup>"Right of access to or ownership of information" language in section 3(a) pertains to information maintained for a governmental body. Open Records Decision No. 558 at 2. Information maintained for a governmental body is subject to the Open Records Act even though the body does not have physical custody of the information. *Id.*

You contend that the documents are excepted from required public disclosure under section 3(a)(4), information which, if released, would give advantage to competitors or bidders. You assert that disclosure of the documents would give ArchiTexas' competitors an advantage in bidding for future projects. The purpose of section 3(a)(4) is to protect the interests of a governmental entity and not the interests of the private party that submits information to the government. Open Records Decision No. 592 (1991). Therefore, your section 3(a)(4) claim does not apply to the requested documents.

You assert that the information is excepted by section 3(a)(1) as information deemed confidential by statutory, judicial or constitutional law. The information is not made confidential by statutory or constitutional law. *See id.* at 2. Because section (3)(a)(10) also encompasses the common law, we will consider the applicability of section 3(a)(1) with section 3(a)(10). *See id.*

Section 3(a)(10) excepts from public disclosure either trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. This exception protects the property interests of third parties recognized by the courts. Open Records Decision No. 319 (1982). In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert denied*, 358 U.S. 898 (1958), the Texas Supreme Court adopted the Restatement of Torts definition of a trade secret. The following criteria determine whether information constitutes a trade secret:

(1) the extent to which the information is known outside [the owner's] business; (2) the extent to which it is known by employees and others involved in [the owner's] business; (3) the extent of measures taken by [the owner] to guard the secrecy of the information; (4) the value of the information to [the owner] and to [its] competitors; (5) the amount of effort or money expended by [the owner] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS, § 757 cmt. b (1939); *See also* Open Records Decision No. 552 (1990).

We must accept a claim that a document is excepted as a trade secret if a *prima facie* case for exception is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991) at 2. However, when a governmental agency or company fails to provide any evidence of the factors necessary to

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(footnote continued)

maintained for a governmental body is subject to the Open Records Act even though the body does not have physical custody of the information. *Id.*

establish a trade secret claim, we cannot conclude that section 3(a)(10) applies. Open Records Decision No. 402 (1983). Neither you nor ArchiTexas have provided any information to establish a *prima facie* case that the requested information is a trade secret. Accordingly, you must disclose the requested information in its entirety.<sup>2</sup>

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Opinion Committee

LRD/le

Ref.: ID# 19143

Enclosures: submitted documents

cc: Mr. Kim Williams  
The Williams Company  
P.O. Box 4074  
Austin, Texas 78765  
(w/o enclosures)

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<sup>2</sup>Although ArchiTexas has reserved its Federal copyright to the proposal pursuant to its contract with Hill County, you must allow inspection of the copyrighted materials; you need not furnish copies of copyrighted materials. Attorney General Opinion JM-672 (1987).